IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 39 OF 2004

Baba Wine Samrat. ... Petitioner.

V/s.

M/s.Bharat Distilleries Pvt.Ltd. ... Respondent.

Mr. Nandu Pawar for the Petitioner.
None for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. A statutory notice addressed to the Company prior to the institution of the winding up proceedings, on 22nd January 2003 records that an amount of Rs.1,32,307/- was due and payable to the Petitioner in respect of payment made for the supply of goods which were not delivered. In the reply dated 15th February 2003, the Company took up the defence that it had a claim against the Petitioner on account of overdue interest. The Company however admitted that in respect of certain past transactions a sum of Rs.2,50,000/- was refunded to the Petitioner. The contention of the Petitioner that the alleged claim on account of overdue interest is purely an afterthought cannot be brushed aside.

2. There is merit in the submission which has been urged on behalf of the Petitioner that if the company had a claim on account of overdue interest, it is inconceivable that an amount of Rs.2,50,000/- would be refunded to the Petitioner,

3. At the stage of admission on 10th February 2005, the learned Single Judge recorded that from the affidavit of service it appeared that the Petitioner had duly served the Company and a rubber stamp of the Company by way of acknowledgement was endorsed. However, it was subsequently scored out and the envelop was returned in a torn condition stating that the Company was not found.

4. An affidavit of service has been filed and the Petition has been duly advertised. The Company has failed to enter appearance or to advance any substantive defence by filing a reply in the proceeding. Therefore, accepting the averments in of the Company Petition an order of winding up would have to be passed.

5. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b).